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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

(S3) 16-cr-617 (VEC)

5 JHEFFERSON ESCOBAR MONTANO,

6 Defendant.

7 -----x

8 New York, N.Y.
9 November 4, 2016
2:35 p.m.

10 Before:

11 HON. VALERIE E. CAPRONI

12 District Judge

13 APPEARANCES

14 AMANDA L. HOULE, ESQ.

15 Assistant United States Attorney

16 BRADLEY L. HENRY, ESQ.

Attorney for Defendant

17 The Henry Law Firm PLLC

18 Also Present: Paula Gold

19 Spanish Interpreter

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1 (In open court)

2 THE CLERK: In the matter of the United States of
3 America v. Jhefferson Escobar Montano, with Spanish interpreter
4 Paula Gold.

5 All counsel please identify yourselves for the record.

6 MS. HOULE: Good afternoon, your Honor. Amanda Houle
7 for the government.

8 THE COURT: Good afternoon.

9 MR. HENRY: Good afternoon, your Honor. Brad Henry
10 for Mr. Escobar Montano.

11 THE COURT: Good afternoon.

12 OK. Mr. Henry, does your client have an application?

13 MR. HENRY: He does, your Honor. He would like to
14 withdraw his plea of not guilty and enter a plea of guilty
15 today to the S3 information, which charges a violation of 46
16 United States Code 70503 and 70506.

17 THE COURT: OK. Mr. Escobar Montano, please sit down.

18 Your attorney has told me that you wish to waive
19 indictment and plead guilty. Before that can happen, I need to
20 make sure -- I need to ask you some questions so I can be sure
21 that you understand the rights that you are giving up, that you
22 fully understand the consequences of your plea, and that you're
23 pleading guilty because you are guilty and not for any other
24 reason.

25 Mr. Brantley, please swear in the defendant.

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1 THE CLERK: Yes, your Honor.

2 (Defendant sworn)

3 THE CLERK: Please state your full name and spell your
4 last name slowly for the record.

5 THE DEFENDANT: (Through interpreter) Jhefferson
6 Escobar Montano.

7 THE CLERK: Please spell your last name.

8 THE DEFENDANT: Jhefferson is --

9 MR. HENRY: Your Honor, if I may, Mr. Montano is
10 illiterate, and so he doesn't read or write.

11 THE COURT: OK.

12 THE DEFENDANT: May I sit?

13 THE COURT: Yes.

14 Mr. Escobar Montano, how old are you?

15 THE DEFENDANT: 27.

16 THE COURT: How far did you go in school?

17 THE DEFENDANT: No, I didn't go to school.

18 THE COURT: Not at all?

19 THE DEFENDANT: No, not at all.

20 THE COURT: Are you able to read and understand
21 English?

22 THE DEFENDANT: No, no.

23 THE COURT: Are you having any difficulty
24 understanding the interpreter?

25 THE DEFENDANT: I don't understand. I don't

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1 understand what's being said.

2 THE COURT: OK. Can you understand what this lady is
3 saying to you?

4 THE DEFENDANT: Oh, yes, yes.

5 THE COURT: All right. Mr. Escobar Montano, have you
6 now, are you now, or have you recently been under the care of a
7 doctor or a psychiatrist?

8 THE DEFENDANT: Yes. Well, no -- well, once I had
9 like an attack, do you understand?

10 THE COURT: Yes.

11 THE DEFENDANT: I had like an attack and I lost
12 consciousness.

13 THE COURT: What type of an attack?

14 THE DEFENDANT: It was an attack, like, you know,
15 where you lose consciousness. I have a problem like I, I know
16 something now but then I don't remember it, like -- or I
17 can't -- I can't catch on.

18 THE COURT: When was the attack?

19 THE DEFENDANT: That's when I was about ten years old.

20 THE COURT: A long time ago.

21 THE DEFENDANT: Yes, a long time ago.

22 THE COURT: Have you ever been treated or hospitalized
23 for any mental illness or any type of addiction, including drug
24 or alcohol addiction?

25 THE DEFENDANT: No.

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1 THE COURT: In the past 24 hours, have you taken any
2 drugs, medicines, or pills, or have you consumed any alcohol?

3 THE DEFENDANT: Well, what they gave to me was sort of
4 like a, like a tranquilizer, like --

5 THE COURT: When was that?

6 THE DEFENDANT: Well, when I have it, you mean, and
7 then some time --

8 THE COURT: When you have the attack.

9 THE DEFENDANT: Yes.

10 THE COURT: Between yesterday and today, have you
11 taken any medicine?

12 THE DEFENDANT: No.

13 THE COURT: Any pills?

14 THE DEFENDANT: Well, no, just some kind of herb that
15 my grandmother had given me, but she -- she's deceased.

16 THE COURT: No, but I'm talking about in the last day,
17 since yesterday.

18 THE DEFENDANT: No. I just get pills for arthritis.
19 They didn't give me pills for that, no.

20 THE COURT: Is your mind clear today?

21 THE DEFENDANT: Yes, a little bit.

22 THE COURT: Do you understand what's going on?

23 THE DEFENDANT: Yes.

24 THE COURT: Why are you here?

25 THE DEFENDANT: Because I'm being charged.

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1 THE COURT: But why particularly are you here? What
2 are you going to do today?

3 THE DEFENDANT: I'm going to plead, and sign.

4 THE COURT: OK. Your attorney has told me that you
5 wish to plead guilty. Is that correct?

6 THE DEFENDANT: Yes.

7 THE COURT: Have you had the opportunity to talk about
8 the consequences of pleading guilty with your attorney?

9 THE DEFENDANT: Yes.

10 THE COURT: Are you satisfied with your attorney?

11 THE DEFENDANT: Yes.

12 THE COURT: Do you think he's doing a good job?

13 THE DEFENDANT: Yes.

14 THE COURT: Does either attorney have any question
15 about the defendant's competence to waive indictment and enter
16 a guilty plea at this time? Ms. Houle?

17 MR. HENRY: No, your Honor.

18 THE COURT: Mr. Henry?

19 MR. HENRY: I do not, your Honor.

20 THE COURT: On the basis of the defendant's responses
21 to my questions and my observations of his demeanor, I find
22 that he is fully competent to waive indictment and enter an
23 informed guilty plea at this time.

24 Mr. Escobar Montano, have you received a copy of the
25 information that is numbered (S3) 16-cr-617?

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1 THE DEFENDANT: Yes.

2 THE COURT: Did someone read it to you?

3 THE DEFENDANT: Yes.

4 THE COURT: Have you discussed it with your attorney?

5 THE DEFENDANT: Yes.

6 THE COURT: This document is what we call a felony
7 information. Do you understand that?

8 THE DEFENDANT: Yes.

9 THE COURT: This document was issued by the United
10 States Attorney, the prosecutor. Because the charge against
11 you is a serious crime, it's a felony, you have the right to
12 require the government to present evidence to a grand jury to
13 see whether the grand jury would vote to charge you. Do you
14 understand that?

15 THE DEFENDANT: Yes.

16 THE COURT: If the grand jury voted to charge you, the
17 document that it would issue would be called an indictment, and
18 it would be signed by the foreperson of the grand jury and the
19 United States Attorney, or the prosecutor. Do you understand
20 that?

21 THE DEFENDANT: Yes.

22 THE COURT: But you do not have to give up your right
23 to an indictment. Do you understand that?

24 THE DEFENDANT: Yes.

25 THE COURT: Do you want to give up your right to have

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1 your case presented to a grand jury?

2 THE DEFENDANT: Yes.

3 THE COURT: Did you sign the waiver of indictment
4 form?

5 THE DEFENDANT: Yes. Yes, yes.

6 THE COURT: OK. Before signing it, did you discuss it
7 with your attorney?

8 THE DEFENDANT: Yes.

9 THE COURT: Did anybody threaten you or force you to
10 give up the right to be indicted?

11 THE DEFENDANT: No.

12 THE COURT: I find that the defendant has knowingly
13 and voluntarily waived his right to be indicted by a grand
14 jury. Mr. Brantley will witness the form and the information
15 will be accepted for filing. The waiver is marked as Court
16 Exhibit No. 1.

17 Do you want me to read out loud the information to
18 you?

19 THE DEFENDANT: No.

20 THE COURT: You were charged with one count of
21 conspiring to distribute and possess with intent to distribute
22 cocaine. Do you understand what you're being charged with?

23 THE DEFENDANT: Yes, a little bit.

24 THE COURT: OK. Well, we'll talk about it a little
25 more. Before I accept your guilty plea, I have to be sure that

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1 you understand the rights that you are going to be giving up if
2 you plead guilty. Please listen to my questions carefully.

3 THE DEFENDANT: Yes.

4 THE COURT: If you don't understand what I'm asking,
5 just tell me that and I'll either rephrase it or give you an
6 opportunity to talk to your attorney. OK?

7 THE DEFENDANT: Yes.

8 THE COURT: Your attorney has said that you wish to
9 plead guilty. You have the right to plead not guilty and to
10 continue to plead not guilty. Do you understand that?

11 THE DEFENDANT: Yes, yes.

12 THE COURT: You have a right to be represented by an
13 attorney at trial and at every other stage of the proceeding.
14 If you can't afford an attorney, an attorney will be appointed
15 to represent you at no cost. Do you understand that?

16 THE DEFENDANT: Yes, yes, I do.

17 THE COURT: You have the right to a speedy and public
18 trial by a jury on the charges against you, which are contained
19 in the information. Do you understand that?

20 THE DEFENDANT: No.

21 THE COURT: You have a right to a trial. You know
22 what a trial is, right?

23 THE DEFENDANT: A trial, like what?

24 THE COURT: Like we would be in a courtroom and the
25 government would call people and witnesses would come and they

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1 will say what they know, and then your attorney could ask them
2 questions, and then the jury would decide whether you've been
3 proven -- whether the government has proved that you're guilty.
4 That's what a trial is. Do you understand that?

5 THE DEFENDANT: Yes, a little bit.

6 THE COURT: OK. So you have a right to a trial, and
7 that's normally how the government proves someone is guilty of
8 a crime, that they prove it by evidence in court. What you're
9 offering is, you're going to say, I'm going to plead guilty, so
10 the government doesn't have to do that. Do you understand
11 that?

12 THE DEFENDANT: Yes, yes.

13 THE COURT: OK. So you understand that you have a
14 right, though, to make the government put on its evidence to a
15 jury. You understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: If you went to trial, you would be
18 presumed innocent, and the government would be required to
19 prove, beyond a reasonable doubt, that you are guilty. You
20 would not have to prove that you were innocent at trial. Do
21 you understand that?

22 THE DEFENDANT: Yes. Yes, a little bit.

23 THE COURT: If you went to trial, you would have the
24 right to see and hear all of the government's witnesses, and
25 your attorney could ask those witnesses questions that he

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1 thinks would help you. Do you understand that?

2 THE DEFENDANT: Well, no, not a lot.

3 THE COURT: OK. So at a trial, people who have
4 information about whether you're guilty of the crime that
5 you're charged with would come to court. They would sit right
6 in this chair. There would be 12 people sitting in those
7 chairs. The witnesses who know what you did or have
8 information about what you did would answer questions from the
9 government. Then your attorney could ask them questions, to
10 try to show that they don't have the facts right. So you have
11 the right to have that process go forward. Do you understand
12 that?

13 THE DEFENDANT: May I ask --

14 THE COURT: Sure.

15 THE DEFENDANT: -- say something?

16 THE COURT: Yes.

17 THE DEFENDANT: So how does that work? It's like if
18 somebody doesn't accept, like what you're saying?

19 THE COURT: I'm not quite sure I understand your
20 question.

21 THE DEFENDANT: See, how can I say this. It's like if
22 somebody doesn't accept, like what you're saying, so I would
23 plead guilty.

24 THE COURT: Correct. If you didn't plead guilty, this
25 is what would happen.

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1 THE DEFENDANT: Oh, yes.

2 THE COURT: OK. You understand that.

3 THE DEFENDANT: Yes, I do.

4 THE COURT: If you went to trial, so if you don't
5 plead guilty and you go to trial --

6 THE DEFENDANT: Yes.

7 THE COURT: -- you would have the right to testify.
8 You could get on stand and tell your side of the story, if you
9 wanted to. You couldn't be forced to testify if you didn't
10 want to. And if you chose not to testify, I would tell the
11 jury, the people who are going to decide whether you're guilty
12 or not, that they couldn't hold against you that you did not
13 testify. Do you understand that?

14 THE DEFENDANT: Yes.

15 THE COURT: If you went to trial, so if you don't
16 plead guilty and go to trial, there will be a jury, and it will
17 be composed of 12 people that are chosen from the community,
18 and all 12 people would have to agree that the government has
19 proved that you are guilty before they could find you guilty.
20 Do you understand that?

21 THE DEFENDANT: Yes.

22 THE COURT: If you were convicted at trial, you would
23 have the right to appeal the verdict, to ask another court to
24 consider whether the jury got the answer right. Do you
25 understand that?

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1 THE DEFENDANT: Yes, yes.

2 THE COURT: If you plead guilty and I accept your
3 plea, you will be giving up each right that I have just
4 described to you, and you will be found guilty just because you
5 say you're guilty. Do you understand that?

6 THE DEFENDANT: Yes, yes.

7 THE COURT: Do you understand that you can change your
8 mind, including right now, and say that you want to go to
9 trial?

10 THE DEFENDANT: Yes, yes.

11 THE COURT: OK. As I've mentioned, you are charged
12 with conspiracy to distribute and possess with intent to
13 distribute cocaine. Do you understand what you're being
14 charged with?

15 THE DEFENDANT: What are you saying?

16 THE COURT: Do you understand that what -- what you're
17 being charged with, the crime --

18 THE DEFENDANT: Oh, yes. Yes.

19 THE COURT: -- is conspiracy to possess with intent to
20 distribute cocaine?

21 THE DEFENDANT: Yes, yes.

22 THE COURT: OK, Ms. Houle. What are the elements of
23 the offense?

24 MS. HOULE: First, your Honor, that two or more people
25 in some way agreed to try to accomplish a shared and unlawful

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1 plan to violate the Maritime Drug Law Enforcement Act by
2 possessing cocaine on a vessel with intent to distribute it;
3 second, that the defendant knew the unlawful purpose of the
4 plan and willfully joined in it; and, third, that the object of
5 the unlawful plan was to possess with the intent to distribute
6 cocaine.

7 THE COURT: OK. Mr. Escobar Montano, if you don't
8 plead guilty, the government would have to prove each element
9 that the prosecutor just laid out beyond a reasonable doubt.
10 Do you understand that?

11 THE DEFENDANT: Yes, I do.

12 THE COURT: OK. The maximum possible penalty, so the
13 most severe punishment that can be imposed for this crime, is a
14 term of imprisonment of up to 20 years, a term of supervised
15 release -- and I'll tell you in a minute what supervised
16 release is -- a term of supervised release that must be at
17 least three years and could be as long as the rest of your
18 life; a fine of up to \$1 million or two times the financial
19 gain from the crime or two times the financial loss from the
20 crime, whichever one of those numbers is the biggest. There's
21 also a \$100 mandatory that has to be imposed, a fine of \$100.
22 Do you understand that?

23 THE DEFENDANT: Yes.

24 THE COURT: All right. Supervised release means that
25 you're subject to monitoring and supervision after your release

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1 from prison. Do you understand that?

2 THE DEFENDANT: Yes.

3 THE COURT: There are terms and conditions of
4 supervised release that you have to comply with. If you don't
5 comply or obey those terms and conditions, you can be return to
6 prison without a jury trial. Do you understand that?

7 THE DEFENDANT: Yes.

8 Excuse me. May I?

9 THE COURT: Yes.

10 THE DEFENDANT: I -- can you repeat that for me,
11 because I didn't quite understand. I am sorry for being rude.

12 THE COURT: No, no, no, you're not being rude at all.
13 You should always ask. This is very important. And you need
14 to understand what you're agreeing to here.

15 THE DEFENDANT: Yes.

16 THE COURT: OK. So there are terms and conditions, so
17 there are requirements, of supervised release, things like:
18 You can't commit another crime. Depending on what the
19 circumstances are, you may have to report to a probation
20 officer. If you don't do what you're required to do, you can
21 be sent back to prison.

22 THE DEFENDANT: Oh, yes.

23 THE COURT: And if you're sent back to prison, you are
24 not entitled to a jury trial on the violation of supervised
25 release. Do you understand that?

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1 THE DEFENDANT: Yes.

2 THE COURT: If you are on supervised release and you
3 violate the conditions and you are sent back to prison, that
4 new prison term could be for all or part of the period of
5 supervised release. Do you understand that?

6 THE DEFENDANT: Yes.

7 THE COURT: Even if you've served part of the term,
8 you could still be sent to jail for the whole term. Do you
9 understand that?

10 THE DEFENDANT: Yes.

11 THE COURT: As part of your sentence, I can also order
12 you to pay restitution, or to pay back the injury of anybody
13 who is injured as a result of your crime. Do you understand
14 that?

15 THE DEFENDANT: No, I didn't understand.

16 THE COURT: OK. If anybody was injured as a result of
17 your crime, we have something called restitution. And
18 restitution means that you would pay the person who was
19 injured, to pay them back for being injured. Do you understand
20 that?

21 THE DEFENDANT: Yes.

22 THE COURT: If I accept your guilty plea and I adjudge
23 you guilty, that adjudication or that finding can deprive you
24 of valuable civil rights, such as the right to vote, the right
25 to hold public office, the right to serve on a jury, the right

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1 to possess any type of a gun, and the right to hold certain
2 professional licenses. Do you understand that?

3 THE DEFENDANT: Yes.

4 THE COURT: OK. Mr. Escobar Montano, are you a United
5 States citizen?

6 THE DEFENDANT: No, never. No, no.

7 THE COURT: Where are you a citizen?

8 THE DEFENDANT: I am from Ecuador.

9 THE COURT: Ecuador. Does he have any immigration
10 status at all?

11 MR. HENRY: No, your Honor.

12 THE COURT: Mr. Henry, have you discussed with your
13 client the likelihood that he is going to be deported at the
14 end of his prison term?

15 MR. HENRY: I have, your Honor.

16 THE COURT: Mr. Escobar Montano, has your attorney
17 told you that after you serve your sentence, in all likelihood
18 you're going to be sent back to Ecuador?

19 THE DEFENDANT: Yes, yes.

20 THE COURT: OK. Is that what you want to have happen?

21 THE DEFENDANT: Oh, yes, to go back to my country.

22 THE COURT: Well, even if you change your mind and you
23 decide you want to stay in the United States, in all likelihood
24 you are going to be sent back to Ecuador.

25 THE DEFENDANT: Yes.

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1 THE COURT: So if that happens and it's not what you
2 want at that time, that is not a basis for you to come back and
3 try to withdraw your guilty plea. Do you understand that?

4 THE DEFENDANT: No.

5 THE COURT: OK. Right now you want to go home.
6 Right?

7 THE DEFENDANT: Yes.

8 THE COURT: Let's suppose that you change your mind
9 and that, while you're in prison, you decide you want to stay
10 in the United States when you get out of prison.

11 THE DEFENDANT: Oh, you mean if I want to stay here?

12 THE COURT: Correct.

13 THE DEFENDANT: Oh, no. I want to go back to my
14 country.

15 THE COURT: OK. Well, even if you change your mind,
16 that will not be a reason, that's not a basis for you to
17 withdraw your guilty plea. Do you understand that?

18 THE DEFENDANT: I couldn't -- withdraw it? What is
19 that?

20 THE COURT: Take it back.

21 THE DEFENDANT: Well, I don't know how that would be.
22 I'm pleading guilty.

23 THE COURT: OK. You're going to plead guilty even if
24 you end up being returned to Ecuador against your will. Do you
25 understand that?

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1 THE DEFENDANT: Yes. Yes, I'm pleading guilty.

2 THE COURT: There is some possibility that you may
3 stay in the United States for some period of time waiting to be
4 deported. Do you understand that? After you get out of jail.

5 THE DEFENDANT: Yes.

6 THE COURT: If that happens, so that you get out of
7 jail but they haven't deported you yet, during that period that
8 you're in the United States, you will be on supervised release.
9 Do you understand that?

10 THE DEFENDANT: Yes.

11 THE COURT: And you have to --

12 THE DEFENDANT: I'm sorry, your Honor. So if I serve
13 my time, then they're going to send me to my country.

14 THE COURT: They will, but there might be a delay.

15 THE DEFENDANT: Oh, yes.

16 THE COURT: And during that period of time, you have
17 to comply with the rules of your supervised release. Do you
18 understand that?

19 THE DEFENDANT: Yes.

20 THE COURT: If you get deported, which you probably
21 will be, and you come back to the United States without the
22 permission of the government, that's a crime. Do you
23 understand that?

24 THE DEFENDANT: Yes. No, I'm never coming back here.

25 THE COURT: OK. Well, if you change your mind and you

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1 come back without permission, that's a crime and it could also
2 be a violation of the terms of supervised release. Do you
3 understand that?

4 THE DEFENDANT: Yes.

5 THE COURT: Do you understand that there is something
6 called sentencing guidelines that I have to consider in
7 determining the appropriate sentence or the appropriate
8 punishment in your case?

9 THE DEFENDANT: What does "guidelines" mean? When
10 they stop me?

11 THE COURT: So guidelines are, it's a way --

12 THE DEFENDANT: Oh. Can -- can he tell me? Because
13 then I don't understand.

14 MR. HENRY: If I may have just one second, your Honor.

15 (Defense counsel and client confer)

16 THE DEFENDANT: I apologize.

17 THE COURT: No, please don't apologize. This is
18 important. It's just a lot of rules and we have to make sure
19 that you understand what you're doing. OK?

20 THE DEFENDANT: Yes.

21 THE COURT: OK. Do you understand that there are
22 sentencing guidelines that I have to consider in determining
23 the appropriate punishment in your case?

24 THE DEFENDANT: Yes.

25 THE COURT: Have you talked to your attorney about how

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1 the guidelines will work in your case?

2 THE DEFENDANT: Yes.

3 THE COURT: I will have to calculate the guideline
4 range and consider that range in determining your sentence. Do
5 you understand that?

6 THE DEFENDANT: Yes, yes.

7 THE COURT: In addition to doing that, I also have to
8 consider a number of other factors that are required by federal
9 law. Federal law requires me to consider a number of factors
10 about you and about the offense in determining what your
11 sentence will be. Do you understand that?

12 THE DEFENDANT: Yes.

13 THE COURT: So even after I calculate a guideline
14 range, your sentence could be above that or below that. Do you
15 understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: If your attorney or anyone else has
18 attempted to estimate or predict what your sentence will be,
19 they could be wrong. Do you understand that?

20 THE DEFENDANT: Yes.

21 THE COURT: It's perfectly appropriate for you and
22 your attorney to talk about how your sentence will be
23 determined, but nobody can tell you for sure what your sentence
24 will be. That's my job, and I can't do that until I do a bunch
25 of other things. Do you understand that?

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1 THE DEFENDANT: Yes.

2 THE COURT: So nobody, not even I, can today tell you
3 what your sentence will be. Do you understand that?

4 THE DEFENDANT: Yes.

5 THE COURT: I stress this because it's important for
6 you to understand that if your sentence is different from what
7 anyone has estimated or predicted it will be or what you hope
8 it will be, that will not be a grounds for you to take back
9 your guilty plea. Do you understand that?

10 THE DEFENDANT: Yes.

11 THE COURT: If you are sentenced to prison, there is
12 no parole. Therefore you can't be released early on parole.
13 Do you understand that?

14 THE DEFENDANT: Yes.

15 THE COURT: I've been given a copy of a plea
16 agreement, which has been marked as Court Exhibit 2. Did you
17 sign the plea agreement?

18 THE DEFENDANT: Yes.

19 THE COURT: Did someone read it to you before you
20 signed it?

21 THE DEFENDANT: Yes.

22 THE COURT: Did you talk about it with your attorney
23 before you signed it?

24 THE DEFENDANT: Yes.

25 THE COURT: Other than what's in the plea agreement,

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1 has anybody made you any promise?

2 THE DEFENDANT: Promise?

3 THE COURT: About the case.

4 THE DEFENDANT: About the case? I don't know. No,
5 no.

6 THE COURT: Has anyone threatened you or forced you to
7 plead guilty?

8 THE DEFENDANT: No.

9 THE COURT: Other than what's in the plea agreement,
10 has anyone promised you anything or offered you anything to
11 plead guilty?

12 THE DEFENDANT: No.

13 THE COURT: Has anyone promised you what your sentence
14 will be?

15 THE DEFENDANT: No.

16 THE COURT: One of the provision that's in the plea
17 agreement is what's called a waiver of the statute of
18 limitations. What that means is, if, at some point down the
19 road, for some reason, your conviction is vacated, the
20 government could charge --

21 THE DEFENDANT: Yes --

22 THE COURT: -- you then --

23 THE DEFENDANT: I'm sorry, your Honor. What does it
24 mean to vacate?

25 THE COURT: To do away with it, to erase it.

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1 THE DEFENDANT: Oh, to erase it.

2 THE COURT: So if at some point down the road your
3 conviction is erased, or vacated, the government will be able
4 to charge you at that point in the future with any crime they
5 could charge you with today. Do you understand that?

6 THE DEFENDANT: Yes.

7 THE COURT: One of the provisions in your plea
8 agreement is an agreement between the government and you
9 regarding a guidelines calculation. Do you understand that?

10 THE DEFENDANT: Yes, a little bit.

11 THE COURT: Yes, OK.

12 THE DEFENDANT: A little.

13 THE COURT: That agreement, that calculation that's in
14 your plea agreement, that is binding on the government -- they
15 can't change their mind -- and it's binding on you -- you can't
16 change your mind -- about that calculation. Do you understand
17 that?

18 THE DEFENDANT: Yes.

19 THE COURT: That agreement that came up with that
20 calculation is binding on you and the government, but it
21 doesn't bind me. Do you understand that?

22 THE DEFENDANT: A little bit.

23 THE COURT: So you and the government agreed that your
24 guideline range is 87 to 108 months of prison. I'm going to do
25 the same thing they --

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1 THE DEFENDANT: How much is that?

2 THE COURT: It's about eight years. I'm going to do
3 the same thing they did, the way they came up with that. I
4 might come up with a different answer. It could be above that
5 or below that. Do you understand that?

6 THE DEFENDANT: Yes.

7 THE COURT: You have also agreed that, so long as your
8 sentence is in that range or below it, so as long as I don't
9 sentence you to more than 108 months in jail, that you will not
10 appeal. Do you understand that?

11 THE DEFENDANT: Yes.

12 THE COURT: In order to accept your guilty plea, I
13 have to understand what you did that makes you guilty. So can
14 you tell me what you did that makes you guilty of this crime?

15 THE DEFENDANT: But I don't know how to read.

16 MR. HENRY: Your Honor, I think -- so I've written out
17 an allocution for him. We've had it translated and read to
18 him. He's nervous and so his short-term memory kicked in.
19 So --

20 THE COURT: Let me ask, I've already had one of these.

21 MR. HENRY: Yes, I understand.

22 THE COURT: So can I perhaps lead him through?

23 MR. HENRY: You may, your Honor. I don't think there
24 will be any issue.

25 THE COURT: There are no quirks to this one?

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1 MS. HOULE: I don't anticipate any, your Honor.

2 THE COURT: OK. Mr. Escobar Montano, I understand you
3 were arrested by the Coast Guard when you were on a fast boat.
4 Is that right?

5 THE DEFENDANT: Yes, yes.

6 THE COURT: And the fast boat had left from Ecuador.
7 Is that correct?

8 THE DEFENDANT: Yes.

9 THE COURT: And you were there and two other people
10 were on the boat. Right?

11 THE DEFENDANT: Yes.

12 THE COURT: Had someone hired you to take the boat
13 somewhere?

14 THE DEFENDANT: Yes. I -- they sought me out.

15 THE COURT: They found you -- or were they going to
16 pay you?

17 THE DEFENDANT: Yes, they were.

18 THE COURT: And did they tell you where you were
19 supposed to take the boat?

20 THE DEFENDANT: To Guatemala.

21 THE COURT: So when you got on the boat to leave, did
22 you know --

23 THE DEFENDANT: Yes.

24 THE COURT: -- what cargo was on the boat? Did you
25 know what was in the boat?

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1 THE DEFENDANT: Yes, I knew, but I didn't know the
2 amount.

3 THE COURT: What was the cargo?

4 THE DEFENDANT: Drugs.

5 THE COURT: It was drugs. Did you know it was
6 cocaine?

7 THE DEFENDANT: Drugs, yes. I was told after.

8 THE COURT: You were told afterwards.

9 THE DEFENDANT: Yes.

10 THE COURT: When you got on the boat --

11 THE DEFENDANT: Then I realized -- yes. I got in a
12 boat.

13 THE COURT: When, at the time you got on the boat --

14 THE DEFENDANT: Yes.

15 THE COURT: -- did you know that there were drugs on
16 the boat?

17 THE DEFENDANT: Yes. I was told.

18 THE COURT: And you knew that you were delivering them
19 to somebody else?

20 THE DEFENDANT: To Guatemala, yes.

21 THE COURT: And someone would take them from you in
22 Guatemala?

23 THE DEFENDANT: They told us -- how can I explain it?
24 I didn't know the people there, but they gave us a direction
25 that we were to follow.

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1 THE COURT: OK. And you understood that at some point
2 you were going to get off the boat and the cocaine was going to
3 go to someone else? Is that right?

4 THE DEFENDANT: If I knew that?

5 THE COURT: Yes.

6 THE INTERPRETER: May I?

7 THE COURT: Yes.

8 THE DEFENDANT: No, no. No, no, no, no.

9 THE COURT: Were you going to keep the drugs?

10 THE DEFENDANT: No, no.

11 THE COURT: What was going to happen to the drugs?

12 THE DEFENDANT: I don't know. I think they were going
13 to receive the drugs there. I think it was a go-fast boat.

14 THE COURT: Right. And then you were going to go back
15 to Ecuador, correct?

16 THE DEFENDANT: No. From there to Guatemala, because
17 they had taken out a passport for me.

18 THE COURT: To go to Guatemala?

19 THE DEFENDANT: Yes.

20 THE COURT: Was someone going to receive the cocaine?

21 THE DEFENDANT: Where?

22 THE COURT: In Guatemala.

23 THE DEFENDANT: Yes, but somebody was going to receive
24 it, but I don't know anybody there.

25 THE COURT: You didn't know who it was going to be.

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1 THE DEFENDANT: No.

2 THE COURT: OK. When you got on the boat, did you
3 know that what you were doing was wrong and against the law?

4 THE DEFENDANT: Yes, I knew.

5 THE COURT: Did anybody threaten you --

6 THE DEFENDANT: I was aware.

7 THE COURT: -- or force you to get on the fast boat?

8 THE DEFENDANT: No.

9 THE COURT: Does either attorney want me to make
10 further inquiry?

11 MS. HOULE: No, thank you, your Honor.

12 MR. HENRY: No, your Honor.

13 THE COURT: Mr. Henry, do you know of any valid
14 defense that would prevail at trial or any reason why your
15 client should not be permitted to plead guilty?

16 MR. HENRY: I do not, your Honor.

17 THE COURT: Do you believe there is an adequate
18 factual basis to support the plea?

19 MR. HENRY: Yes, I do.

20 THE COURT: Ms. Houle, do you believe there is an
21 adequate factual basis to support the plea?

22 MS. HOULE: I do, your Honor.

23 THE COURT: Mr. Escobar Montano, how do you plead?
24 Guilty or not guilty?

25 THE DEFENDANT: Guilty.

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1 THE COURT: Are you pleading guilty voluntarily and of
2 your own free will?

3 THE DEFENDANT: Yes, guilty.

4 THE COURT: The information also contains a forfeiture
5 allegation. What that means is that the government says you
6 have to give up, or give to the government, any property that
7 was used to commit the crime or to help you commit the crime.
8 Do you agree to give that property to the government?

9 THE DEFENDANT: What kind of property? Like what kind
10 of --

11 THE COURT: The boat is the most obvious.

12 THE DEFENDANT: The boat?

13 THE COURT: The fast boat and the drugs, and any money
14 that was on board.

15 THE DEFENDANT: Yes.

16 THE COURT: You'll give all that to the government?

17 THE DEFENDANT: Yes.

18 THE COURT: All right. I find that there is an
19 adequate factual basis for the plea, that Mr. Escobar Montano
20 understands the rights he is giving up and is waiving those
21 rights knowingly and voluntarily. I find that Mr. Escobar
22 Montano understands the consequences of his plea, the potential
23 sentence that may be imposed. Because I find that his plea is
24 entered knowingly and voluntarily and is supported by an
25 independent factual basis for each and every element of the

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1 crime charged, I accept his guilty plea.

2 I direct that a presentence investigation be conducted
3 by the Probation Office and that a presentence report be
4 prepared.

5 Mr. Escobar Montano, you are going to be interviewed
6 by someone from the Probation Office. You can and you should
7 have your attorney with you for that interview. Anything that
8 you say to the Probation Office should be true and complete.
9 The report that they prepare is very important to me in
10 determining what the appropriate punishment is for you. So
11 it's important that I have accurate information.

12 THE DEFENDANT: Yes.

13 THE COURT: There's going to come a time when a draft
14 report will be prepared. Your attorney will go over it with
15 you. It's really important that if anything in it isn't
16 correct, that you tell your lawyer so that he can make sure it
17 gets corrected.

18 THE DEFENDANT: Yes. I have a question. Like
19 incorrect in what way?

20 THE COURT: Well, maybe it says that you were
21 convicted of a crime in Ecuador and in fact you were never
22 convicted of a crime in Ecuador. So that would be a mistake,
23 and you would want to correct that.

24 THE DEFENDANT: OK, yes.

25 THE COURT: All right. At the time of sentence, your

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1 attorney and you will have an opportunity to speak. Do you
2 understand that?

3 THE DEFENDANT: Yes.

4 THE COURT: Mr. Henry, I'm going to ask you to get him
5 interviewed in two weeks, and the government's case should be
6 given to probation within two weeks.

7 Do we have a sentencing date?

8 THE CLERK: February 17, 2017, at 2:30 p.m.

9 THE COURT: OK. So that's the date that you'll come
10 back to be sentenced. Do you understand that?

11 THE DEFENDANT: Yes. You mean when -- the time --
12 when the time passes? How long before I come here?

13 THE COURT: It will be in February, so three months.

14 THE DEFENDANT: Oh, I see.

15 THE COURT: OK? Do you have any questions?

16 THE DEFENDANT: No.

17 THE COURT: OK. All right. Thank you.

18 Thank you, Mr. Henry.

19 MR. HENRY: Thank you, your Honor.

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